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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 PAUL FAIRLESS,

9 Plaintiff,

v.

10 THOMAS W. HARKER, Acting
11 Secretary of the Navy,¹

12 Defendant.

CASE NO. C19-5747 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 30, Plaintiff Paul Fairless’s objections to the R&R, Dkt. 31, and Defendant Thomas W. Harker’s response to objections, Dkt. 32.

17 Fairless, a military veteran and employee of the Department of the Navy, sued Defendant alleging disability discrimination/hostile work environment in violation of the Rehabilitation Act of 1973 and retaliation in violation of the Rehabilitation Act and Title VII of the Civil Rights Act. Dkt. 1. Defendant moved for partial summary judgment on

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22 ¹ Pursuant to Federal Rule of Civil Procedure 25(d), the Court substitutes Thomas W. Harker, Acting Secretary of the Navy, as the appropriate defendant.

1 Fairless's disability discrimination/hostile work environment claim under the
2 Rehabilitation Act. Dkt. 22. Fairless responded, Dkt. 27, and Defendant replied, Dkt. 28.
3 Judge Creatura issued the instant R&R, recommending that the motion be granted.
4 Dkt. 30.

5 The district judge must determine de novo any part of the magistrate judge's
6 disposition that has been properly objected to. The district judge may accept, reject, or
7 modify the recommended disposition; receive further evidence; or return the matter to the
8 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

9 Fairless contends that Judge Creatura addressed his evidence "in a piecemeal
10 manner, noting cases which appear to find that each element, individually, was not
11 sufficient to support a hostile work environment." Dkt. 31 at 3. He contends that "[t]he
12 events that make up an allegation of harassment should be viewed as a totality." *Id.*

13 Having reviewed Judge Creatura's thorough analysis of the facts of this case and
14 careful comparisons to relevant authority, the Court concludes that Fairless's objections
15 mischaracterize the R&R and are without merit. Judge Creatura carefully evaluated the
16 severity of the alleged incidents under the relevant precedent, appropriately concluding
17 they are not comparatively severe, before turning to evaluate whether the incidents, taken
18 together, amount to a pattern of incidents that permeated Fairless's employment. Dkt. 30
19 at 13–15. The Court agrees with Judge Creatura that under the relevant authorities,
20 Fairless has not shown the particular disability-related incidents at issue were sufficiently
21 pervasive or severe as to alter the conditions of employment and create an abusive
22 working environment. *See id.* at 15.

1 The Court having considered the R&R, Plaintiff's objections, and the remaining
2 record, does hereby find and order as follows:

- 3 (1) The R&R is **ADOPTED**;
- 4 (2) Defendant's motion for partial summary judgment, Dkt. 22, is **GRANTED**,
5 and the claim of disability discrimination/hostile work environment under
6 the Rehabilitation Act is **DISMISSED with prejudice**;
- 7 (3) The Clerk shall send copies of this Order to Plaintiff and to Judge Creatura;
8 and
- 9 (4) This matter is re-referred to Judge Creatura for further consideration.

10 Dated this 11th day of May, 2021.

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13 BENJAMIN H. SETTLE
14 United States District Judge
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